

WILLIAM G. FAIRBANKS

IBLA 75-515

Decided October 23, 1975

Appeal from decision of the Alaska State Office, Bureau of Land Management, holding headquarters site notice of location AA-9063 unacceptable for recordation.

Affirmed as modified.

1. Alaska: Headquarters Sites -- Alaska: Land Grants and Selections -- State Selections

A headquarters site claim is invalid when occupancy of the site was initiated more than 90 days prior to the filing of a notice of location and an intervening state selection application has segregated the land.

APPEARANCES: William G. Fairbanks, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

William G. Fairbanks filed notice of location AA-9063 for a headquarters site in Alaska pursuant to 43 U.S.C. §§ 687a and 687a-1 (1970). He appeals the decision of the Alaska State Office, Bureau of Land Management, dated January 20, 1975, which declared his notice of location unacceptable for recordation.

The State Office based its decision on the requirement that unless a claimant files his notice of location within 90 days of the initiation of his occupancy of the site, he shall receive no credit for such occupancy. Since the date appellant filed his notice was 95 days after he indicated initiating occupancy of the site, the State Office determined that he gained no credit for his occupancy prior to the filing date. Further, the land appellant claimed was segregated from all forms of appropriation by a selection application filed by the State of Alaska prior to the date on

which appellant filed his notice of location. 1/ The State Office therefore concluded that appellant's notice was unacceptable for recordation.

On appeal, appellant argues that his notice was late due to delays by the local post office. However, the law as applied to the facts of appellant's case requires that we affirm the decision of the State Office.

[1] In order to receive credit for occupancy of a headquarters site, a claimant must follow the requirements of the Act of April 29, 1950, 43 U.S.C. § 687a-1 (1970), which states in part:

All qualified persons \* \* \* initiating claims subject to the provisions of section 687a of this title, shall file a notice describing such claim \* \* \* within ninety days from the date of the initiation of the claim \* \* \*. Unless such notice is filed in the proper district land office within the time prescribed the claimant shall not be given credit for the occupancy maintained in the claim prior to the filing of (1) a notice of the claim in the proper district land office, or (2) an application to purchase, whichever is earlier. \* \* \*

Appellant filed his notice of location in the Anchorage State Office on June 11, 1974. 2/ In that notice, he stated that he began his occupancy of the claim on March 28, 1974, which is subsequent to the date the state selection application was filed. In a letter to the State Office filed July 3, 1974, he changed the date of occupancy to March 21, 1974, the day before the filing of the selection application. On appeal, appellant again changes the date of his occupancy:

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1/ Some confusion exists in the case file as to whether the land in appellant's claim is in T. 16 N., R. 44 W., S.M., or in T. 16 N., R. 45 W., S.M. It appears that the correct description is T. 16 N., R. 45 W., S.M. All unpatented land in that township is included in selection application AA-8930 filed by the State of Alaska on March 22, 1974. However, even if the land in appellant's claim was determined to be in T. 16 N., R. 44 W., S.M., it would be subject to a similar selection application (AA-8928) also filed on March 22, 1974. Both AA-8930 and AA-8928 have been tentatively approved by the Alaska State Office. 2/ In the notice appellant stated he had used the land as a headquarters for his trap lines and he planned to live there for trapping in winter. The improvements listed were a cache and a root cellar.

I have been using this site since March 1973, as headquarters of my trapline. \* \* \*  
I dated my notice March 21, 1974 because that was when I visited the Post Office,  
and I saw no urgent need to file until then.

Appellant's two most recent statements show that he initiated his occupancy more than 90 days prior to filing his notice of location. Therefore, the Act of April 29, 1950, 43 U.S.C. § 687a-1 (1970), prohibits his receiving credit for any occupancy of the site prior to June 11, 1974. Rene P. Lamoureux, 20 IBLA 243, 244-45 (1975); Kennecott Copper Corp., 8 IBLA 21, 29, 79 I.D. 636, 640 (1972).

The State of Alaska filed a state selection application covering the land in appellant's claim on March 22, 1974. (See footnote 1, supra.) Such an application segregates the land as of the date filed "from all appropriations based upon application or settlement and location." 43 CFR 2627.4. Therefore, since the land in appellant's claim was not available for location after March 22, 1974, and since appellant can receive no credit for occupancy prior to June 11, 1974, the headquarters site claim was invalid when the notice was filed. Lloyd Schade, 19 IBLA 251 (1975); Albert W. Ball, Sr., 17 IBLA 306 (1974). Further, even if appellant's occupancy began on March 28, 1974, as he first indicated, his claim was invalid because on that date the land was segregated by the selection application. Therefore, since the notice, in effect, had been recorded, the State Office should have accepted the notice for recordation, but declared the claim invalid for the above reasons.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is modified to invalidate the claim as indicated herein.

Joan B. Thompson  
Administrative Judge

We concur:

Douglas E. Henriques  
Administrative Judge

Frederick Fishman  
Administrative Judge

